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# Supreme Court of the United States

OCTOBER TERM, 1944.

No. 315.

W. C. LAYCOCK ET AL., PETITIONERS,

VS.

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT No. 12 ET AL., RESPONDENTS.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

W. C. Laycock,
J. D. Norwood,
W. C. Laycock,
In His Capacity As Agent for the Sole Benefit of W. C. Laycock and J. D. Norwood,

By W. R. MONTGOMERY,
*Counsel for Petitioners.*

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# Supreme Court of the United States

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No. .....

W. C. LAYCOCK ET AL., PETITIONERS,

VS.

HIDALGO COUNTY WATER CONTROL & IMPROVEMENT DISTRICT No. 12 ET AL., RESPONDENTS.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The petition of W. C. Laycock, J. D. Norwood and W. C. Laycock in his capacity as agent for the sole benefit of W. C. Laycock and J. D. Norwood, for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, respectfully shows to this Honorable Court:

I.

## SUMMARY STATEMENT OF THE CASE.

On November 20, 1935, W. L. Shumate, Jr., brought suit in the United States District Court for the Southern District of Texas, Brownsville Division, seeking judgment upon certain coupons attached to Interim Bonds issued by the Respondent, Hidalgo County Water Control and Improvement District No. 12 (R. 148-155). Said Respondent District is organized and exists under and by virtue of Article XVI, Section 59, Constitution of Texas, and Article 7880, Sections 1, *et seq.*, Revised Civil Statutes of Texas, set forth in the Appendix to the supporting Brief attached hereto, pages 43 to 133. Said suit bore the number 891 D. L., and was styled *W. L. Shumate, Jr.*, v. *Hidalgo County Water Control and Improvement District No. 12* (R. 148).

After proper service of process (R. 147-148), and answer filed (R. 157-158), the cause was submitted to a jury on instructions, and on December 6, 1935, judgment was rendered in favor of W. L. Shumate, Jr., against the Respondent District for the sum of $48,450 principal, together with the further sum of $6,397.60 interest, with interest on the total sum at the rate of six per cent per annum (R. 37-38, 158). Although formal answer was filed for the Respondent District, no contest was made upon the trial (R. 38). Said judgment was not appealed from, became final, has never been satisfied (R. 163), nor set aside (R. 138, 141-142). On January 6, 1936, W. L. Shumate, Jr., assigned said judgment to Petitioners, the present legal and equitable owners thereof (R. 160-161).

Being unable to collect their judgment by process (R. 158-160), Petitioners instituted this present suit on November 9, 1937, seeking to enforce the final judgment (R.

18-38). This suit being ancillary to the previous suit, No. 891 D. L., and based upon the final judgment in said previous suit, had for its purpose the enforcement of said judgment by writ of mandamus compelling the officers and directors of the Respondent District to take the steps provided by the laws of the State of Texas to pay said judgment. This remedy was sought both specifically (R. 36) and generally (R. 88-89).

Long after the judgment sought to be enforced had become final, the State of Texas, through its Attorney General, instituted suit in the 93rd District Court of Hidalgo County, Texas, the situs of the Respondent District, seeking, among other things, to have said Respondent District declared non-existent and to have all its outstanding bonded indebtedness invalidated (R. 293-232). That suit reached the Supreme Court of Texas on appeal from a temporary injunction. *State* v. *Miller*, 133 Tex. 498, 128 S. W. 2d 1134. The decision in that Court, rendered on June 7, 1939, held that the Interim Bonds issued by the Respondent District were invalid solely because they had been issued in an amount slightly in excess of the constitutional limits fixed by the vote of the property owners which authorized their issuance. The Supreme Court of Texas held that the Respondent District had full power to issue Interim Bonds, and that Interim Bonds, when properly issued, were legal and valid obligations, but that the Respondent District was limited as to the amount of such Interim Bonds which it could lawfully issue, to the amount provided by statute authorizing such issuance which was in existence at the time the vote authorizing the issuance of Construction Bonds was had. It held that because at the time the voters authorized the issuance of Construction Bonds, a statute was in effect which permitted the issuance of Interim Bonds in an amount equal to ten per cent of the

Construction Bonds so voted, that this was the limit of the authority of the District to issue such Interim Bonds. The Supreme Court of Texas held that the issuance of Interim Bonds did not create any additional debt, but was merely a charge against the Construction Bonds and was to be paid out of the revenues provided by law for the servicing of the Construction Bonds. It further held that because, after the vote on the Construction Bonds was had, the Legislature amended the Interim Bond statute so as to permit the issuance of Interim Bonds in an amount of twenty-five per cent instead of ten per cent of the Construction Bonds, and since the Respondent District attempted to issue Interim Bonds in excess of ten per cent of the Construction Bonds, to that extent the constitutional limitations had been exceeded.

Based upon this holding, the state trial court, on final hearing, declared all of said Interim Bonds invalid, and enjoined all parties from dealing in them further. Said judgment, rendered on January 30, 1940 (R. 340), expressly denied the State's prayer for the dissolution of the Respondent District (R. 338), and expressly eliminated from the decree any adjudication of the rights of Petitioners under the judgment of the court below in Cause No. 891 D. L. which was, as stated, based upon coupons attached to Interim Bonds of said District (R. 338-339).

That judgment was affirmed by the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas on October 30, 1941, and writ of error was subsequently refused by the Supreme Court of Texas. *Miller* v. *State ex rel. Abney*, (Tex. Civ. App.) 155 S. W. 2d 1012.

On February 5, 1942, the State of Texas, acting through its Attorney General, asked leave to intervene in the case at bar (R. 118-128), and, over Petitioners' opposition (R. 129-130), such leave was granted on April 8, 1942 (R. 130-131).

This suit came on for trial before the Honorable T. M. Kennerly, District Judge at Brownsville, on May 25, 1942 (R. 141). The Respondents, both the District and the Intervenor State of Texas, attacked the judgment in Cause No. 891 D. L., on the ground that it had been obtained by fraud on the jurisdiction of the trial court (R. 39-41). This attack was unsuccessful, and the trial court held the original judgment valid (R. 138), refused to set same aside, and denied the relief sought in this respect (R. 142). Respondents did not cross-appeal from this adverse ruling of the trial court.

However, because the courts of Texas, long after the said judgment had become final, had held that the Interim Bonds which were the basis of such judgment were invalid because they were issued in an amount in excess of the constitutional limitations, the trial court not only denied Petitioners any relief for the enforcement of said judgment, but went farther and enjoined them from ever asserting any rights under such judgment or transferring same to other persons (R. 142).

On appeal, the judgment was affirmed *in toto* (R. 563). The opinion is reported in 132 F. 2d 784 (R. 557). The majority opinion by Judge Hutcheson (R. 557), based its decision on the proposition that while mandamus is a legal remedy, its application is based upon equitable principles, and therefore, under the doctrine as announced in the case of *Brownsville* v. *Loague*, 129 U. S. 493, the trial court properly refused Petitioners any relief and properly enjoined them from asserting any rights under or transferring the judgment. The majority opinion expressly declined to pass upon the issue as to whether or not the presence of the State of Texas in the suit justified the trial court's action.

The concurring opinion by Judge Sibley (R. 562), agreed with Petitioners' contentions to the effect that

the doctrine of *Brownville* v. *Loague* does not apply to this case, and that as between Petitioners and the Respondent District, the trial court would have been unjustified in refusing to enforce its own valid, final judgment. But, because the State of Texas is a party to this suit, Judge Sibley is of the opinion that the judgment of the trial court was right both in refusing the remedy sought and in enjoining Petitioners from ever asserting any rights under or transferring such judgment. In other words, absent the intervention of the State of Texas, the trial court could neither refuse to enforce its previous judgment nor enjoin Petitioners from claiming under it, but, present the State of Texas, the previous valid, final judgment of the trial court was properly emasculated. The majority and the concurring opinions are thus demonstrated to be irreconcilable.

## II.

## JURISDICTION.

The judgment of the Circuit Court of Appeals is dated May 19, 1944 (R. 563). Petition for writ of certiorari was filed in this Court within three months from the date of such judgment. Jurisdiction of this Court is thereby timely invoked under Section 240 (a) of the Judicial Code, as amended (Sec. 347 (a), Title 28, U. S. C. A.), and Rule 38 (5b) of this Court, and Sec. 350, Title 28, U. S. C. A.

## III.

## QUESTIONS PRESENTED.

(1) Did the courts below have the power to enjoin Petitioners from claiming any rights under, or transferring to other persons a valid, final judgment of the United

States District Court which has successfully weathered a direct attack and was found to be jurisdictionally valid?

(2) Did the courts below properly deny to Petitioners any remedy for the enforcement of a final judgment at law of the United States District Court, jurisdictionally valid and free from fraud, and did they correctly hold that where enforcement of such judgment is sought, the trial court may look through the judgment in search of errors in its rendition?

(3) Did the majority opinion of the Circuit Court of Appeals correctly hold that the doctrine of *Brownsville* v. *Loague*, 129 U. S. 493, is applicable to a valid, final judgment at law based upon coupons attached to bonds of a water district whose only invalidity lies in the fact that they were issued in an amount slightly in excess of the constitutional limitations?

(4) Did the Circuit Court of Appeals correctly hold that the question of the coupons' validity was not *res judicata* by virtue of the judgment rendered on them by the United States District Court in cause No. 891 D. L.?

(5) Did the concurring opinion of the Circuit Court of Appeals correctly hold that the State of Texas in its sovereign capacity may come into the Federal courts and attack valid, final judgments against water districts which it has given the power of suing and being sued?

## IV.

## REASONS FOR GRANTING THE WRIT.

(1) In holding that the rule announced in *Brownsville* v. *Loague*, 129 U. S. 493, empowers a United States District Court *not only* to refuse to grant a judgment cred-

itor any remedy for the enforcement of his judgment, *but also* to enjoin such judgment creditor from claiming any rights whatsoever thereunder or from selling or transferring such judgment to any other persons, the Circuit Court of Appeals has sanctioned such a departure by a lower court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

If the holding of the majority opinion of the Circuit Court of Appeals to the effect that the doctrine of *Brownsville* v. *Loague* applies to the case at bar is correct, such holding would only justify a denial to Petitioners of the remedy of mandamus. It would not and could not justify the complete emasculation of such judgment in the absence of a successful direct attack thereon. The judgment being final and jurisdictionally valid is a vested property right of Petitioners and cannot be affirmatively taken from them by judicial fiat without due process of law.

(2) In holding that the trial court may look through its own valid, final judgment at law when importuned to enforce same, and that it may deny its enforcement because of an error in its rendition, the Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court. Some of these applicable decisions are: *Cromwell* v. *County of Sac*, 94 U. S. 351; *Ralls County Court* v. *United States*, 105 U. S. 733; *United States ex rel. Ranger* v. *City of New Orleans*, 98 U. S. 381; *Santa Fe County* v. *New Mexico*, 215 U. S. 296; *Memphis* v. *Brown*, 97 U. S. 300; *United States* v. *Ft. Scott*, 99 U. S. 152; *Riggs* v. *Johnson County*, 6 Wall. 166; *Board of Commissioners of Knox County* v. *Aspinwell*, 24 How. 376; *State of Arkansas ex rel. Utley* v. *St. L. & S. F. R. Co.*, 269 U. S. 172; *Louisiana ex rel.*

*Southern Bank* v. *Pilsbury*, 105 U. S. 278; *United States ex rel. Harshman* v. *Knox County Court*, 122 U. S. 306; *United States ex rel. Wolfe* v. *Mayor, etc., of New Orleans*, 103 U. S. 358.

(3) The holding of the Circuit Court of Appeals to the effect that the trial court properly looked through its own valid, final judgment at law and properly denied its enforcement, conflicts with decisions of other Circuit Courts of Appeals which have held to the contrary. Some of said conflicting decisions are: *Woods Bros. Const. Co.* v. *Yankton County, S. D.*, (8th Cir.) 54 F. 2d 304; *City of Mohall* v. *First Nat. Bank of Sleepy Eye*, (8th Cir.) 105 F. 2d 315; *City of Wheeling* v. *John F. Casey Co.*, (4th Cir.) 85 F. 2d 922, 89 F. 2d 308.

(4) In holding that the judgment sought to be enforced is not *res judicata* of the issue of the validity of the coupons sued on, irrespective of later holdings by other courts that they were invalid, the Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions.

Some of such decisions are *Commonwealth of Massachusetts* v. *Davis*, (Tex. S. Ct.) 168 S. W. 2d 216, 220, citing *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371; *Security Trust Co. of Austin* v. *Lipscomb County*, (Tex. S. Ct.) 180 S. W. 2d 151; *Landa* v. *Isern*, (Tex. S. Ct.) 174 S. W. 2d 310; *Harkness* v. *Hutcherson*, 90 Tex. 383, 38 S. W. 1120.

(5) The holding of the Circuit Court of Appeals to the effect that the rule announced in *Brownsville* v. *Loague*, 129 U. S. 493, applies to judgments on bonds or coupons issued in excess of constitutional limitations, conflicts with numerous decisions of other Circuit Courts of Appeals which hold that judgments based on bonds issued

as a result of a defective exercise of the power to issue them, as distinguished from a total absence of such power, may not be refused enforcement under the holding in *Brownsville* v. *Loague*. Some of these conflicting decisions are: *Estill County* v. *Embry*, (6th Cir.) 144 Fed. 913; *Board of Commissioners* v. *Platt*, (8th Cir.) 79 Fed. 567; *Geer* v. *Board of Commissioners of Ouray County*, (8th Cir.) 97 Fed. 435; *Mayor, etc., of the City of Helena* v. *United States ex rel. Helena Waterworks Co.*, (9th Cir.) 104 Fed. 113; *Cushman* v. *Warren-Scharf Asphalt Paving Co.*, (7th Cir.) 220 Fed. 857.

(6) The holding in the concurring opinion to the effect that a State in its sovereign capacity may collaterally attack final judgments of the Federal Courts rendered against water districts which the State has given the power to sue and be sued without its joinder, thereby rendering all such judgments subject to attack at any time at the whim of the State Attorney General, raises an important question of federal law which has not been, but should be, settled by this Court.

Adherence to this doctrine would destroy the rule of *res judicata* in the federal courts in so far as judgments against political subdivisions and semi-independent branches of the state government are concerned. The plea of limitations not being available against a sovereign State, there can be no final judgment against one of its branches or subdivisions which otherwise have the independent power to contract, sue and be sued, if this holding is approved. The control of the federal courts over their own judgments, final, subsisting and jurisdictionally valid, is a most important federal question and one that should be definitely settled by this Court.

## PRAYER FOR WRIT.

Wherefore, Petitioners respectfully pray that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Fifth Circuit at New Orleans commanding said Court to certify and send to this Court on a day certain to be named therein, a full and complete transcript of the record and the proceedings had in said Court in the case numbered and entitled on its docket No. 10614, *W. C. Laycock et al., Appellants*, v. *Hidalgo County Water Control and Improvement District No. 12 et al., Appellees*, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgments of the Circuit Court of Appeals and of the District Court be reversed by this Court and judgment rendered for Petitioners granting the writ of mandamus as prayed for and dissolving the injunction rendered against these Petitioners by the District Court.

In the alternative, Petitioners pray that the injunction be dissolved and the cause remanded to the District Court for further proceedings looking to the enforcement of the judgment in Cause No. 891 D. L., styled *W. L. Shumate, Jr.*, v. *Hidalgo County Water Control and Improvement District No. 12*, and for such other relief as to this Honorable Court may seem right and proper.

Dated this 27th day of July, A. D. 1944.

W. C. Laycock,
J. D. Norwood,
W. C. Laycock,
In His Capacity As Agent for the Sole Benefit of W. C. Laycock and J. D. Norwood,

By W. R. MONTGOMERY,
*Counsel for Petitioners.*

By: W. R. Montgomery
*Of Counsel.*